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**FILED**  
**YOLO SUPERIOR COURT**  
**MAY 26 2016**  
BY E. ENDO  
DEPUTY

**RECEIVED**  
**MAY 27 2016**

7 Attorneys for Plaintiff

**Yolo County District Attorney**

8  
9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF YOLO

11 THE PEOPLE OF THE STATE OF CALIFORNIA, )

Case No. **CV16-857**

12 Plaintiff, )

[PROPOSED] FINAL JUDGMENT  
PURSUANT TO STIPULATION

13 v. )

14 )  
15 )  
16 OHANA HAWAIIAN BARBECUE, INC., )

17 Defendant, )  
18 )

19  
20  
21 Plaintiff, the People of the State of California, by and through Jeff W. Reisig, District  
22 Attorney of Yolo County, filed its Complaint in this matter pursuant to Business and Professions  
23 Code, § 17200 *et seq.* The People and Defendant have stipulated to entry of this Final Judgment  
24 Pursuant to Stipulation (“Final Judgment”) to resolve all the matters alleged in the People’s  
25 Complaint.

26 NOW THEREFORE, the People and Defendant having requested this Court to enter this  
27 Final Judgment, and the Court having considered the Final Judgment reached between the parties, IT  
28 IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:



1 **ACTION PLAN**

2 4. Pursuant to Business and Professions Code section 17203, Ohana must comply with  
3 the terms of its Action Plan, attached as Exhibit 1.

4 **CIVIL PENALTIES AND COST RECOVERY**

5 **Cost recovery**

6 5. Ohana must pay Yolo County Environmental Health Division EIGHT HUNDRED  
7 AND TWENTY DOLLARS AND EIGHTY CENTS (\$820.80) for reimbursement of costs of  
8 investigation and other costs of enforcement.

9 6. Ohana must pay the Yolo County District Attorney's Office TWO THOUSAND  
10 THREE HUNDRED AND SEVENTY-NINE DOLLARS AND TWENTY CENTS (\$2,379.20) for  
11 reimbursement of attorneys' fees, costs of investigation, and other costs of enforcement.

12 **Civil penalties**

13 7. Ohana must pay TEN THOUSAND DOLLARS (\$10,000.00) as civil penalties  
14 pursuant to Business and Professions Code section 17206.

15 **Form of payment**

16 8. Ohana must pay civil penalties and costs in the total amount of THIRTEEN  
17 THOUSAND TWO HUNDRED DOLLARS (\$13,200.00). Ohana must pay these amounts, in three  
18 separate checks, at the time of the entry of this Final Judgment:

- 19 a. One business or cashier's check for EIGHT HUNDRED AND TWENTY  
20 DOLLARS AND EIGHTY CENTS (\$820.80) must be made payable to "Yolo  
21 County EH" for the costs of investigation and other costs of enforcement;
- 22 b. One business or cashier's check for TWO THOUSAND THREE HUNDRED  
23 AND SEVENTY-NINE DOLLARS AND TWENTY CENTS (\$2,379.20) must be  
24 made payable to the Yolo County District Attorney's Office for attorneys' fees,  
25 costs of investigation, and other costs of enforcement; and
- 26 c. One business or cashier's check for TEN THOUSAND DOLLARS (\$10,000.00)  
27 must be made payable to the Yolo County District Attorney's Office for civil  
28 penalties.



1 (collectively, “Agencies”), or against any of the People or Agencies’ officers, employees,  
2 representatives, agents or attorneys, arising out of or related to any Covered Matter; provided,  
3 however, that if any Agencies initiate claims against Ohana, Ohana reserves any and all rights,  
4 claims, demands and defenses against such Agencies.

5 14. Any event that is beyond Ohana’s control and that prevents it from timely performing  
6 any obligation under Paragraphs 4, 5, and 6 of this Final Judgment, despite its best efforts to fulfill  
7 that obligation, is a “force majeure” event. The requirement that Ohana exercise its “best efforts to  
8 fulfill the obligation” includes the requirement that Ohana use its best efforts to anticipate any  
9 potential force majeure event and use best efforts to address the effects of any potential force majeure  
10 event (1) as it is occurring, and (2) following the force majeure event, such that the delay is  
11 minimized to the greatest extent possible. “Force majeure” does not include financial inability to  
12 fund or complete the obligation.

#### 13 NOTICES

14 15. All submissions and notices required by this Final Judgment must be sent to:

15 For the People:

16 David Green  
17 Deputy District Attorney  
18 Office of the District Attorney, Yolo County  
19 Consumer Fraud and Environmental Protection Division  
20 301 Second Street  
21 Woodland, CA 95695

22 For Ohana:

23 Carrie Tsang  
24 Ohana Hawaiian Barbecue, Inc.  
25 1693 Sabre St  
26 Hayward, CA 94545

27 16. Any Party may change its notice name and address by informing the other Party in  
28 writing, but no change is effective until it is received. All notices and other communications required  
or permitted under this Final Judgment that are properly addressed as provided in this paragraph are  
effective upon delivery if delivered personally or by overnight mail, or are effective five (5) days

1 following deposit in the United States mail, postage prepaid, if delivered by mail, or the day that  
2 electronic mail is sent if sent before 5 p.m. to the electronic mail addresses of the designated  
3 recipients for notice concurrent with sending the notice by overnight mail.

4 **EFFECT OF FINAL JUDGMENT**

5 17. Except as expressly provided in this Final Judgment, nothing in this Final Judgment is  
6 intended nor may it be construed to preclude the People from exercising their authority under any  
7 law, statute, or regulation. Except as expressly provided in this Final Judgment, Ohana retains all of  
8 its defenses to the People’s exercise of the aforementioned authority.

9 **FUTURE REGULATORY CHANGES**

10 18. Nothing in this Final Judgment excuses Ohana from meeting any more-stringent  
11 requirement that may be imposed by applicable law or by any change in the applicable law. To the  
12 extent any future statutory or regulatory change makes Ohana’s obligations less stringent than those  
13 provided for in this Final Judgment, Ohana’s compliance with the changed law will be deemed  
14 compliance with this Final Judgment; however, any change in law or regulation may not reduce or  
15 diminish Ohana’s obligations to comply with Paragraph 6.

16 **WAIVER**

17 19. The People’s failure to enforce any provision of this Final Judgment may neither be  
18 deemed a waiver of such provision nor in any way affect the validity of this Final Judgment. The  
19 People’s failure to enforce any such provision does not preclude them from later enforcing the same  
20 or any other provision of this Final Judgment. Except as expressly provided in this Final Judgment,  
21 Ohana retains all defenses allowed by law to any such later enforcement. No oral advice, guidance,  
22 suggestions, or comments by employees or officials of any Party regarding matters covered in this  
23 Final Judgment may be construed to relieve any Party of its obligations under this Final Judgment.

24 **CONTINUING JURISDICTION**

25 20. The Court will retain continuing jurisdiction to enforce the terms of this Final  
26 Judgment and to address any other matters arising out of or regarding this Final Judgment. The  
27 Parties must meet and confer at least ten (10) business days before the filing of any application or  
28 motion relating to this Final Judgment, and must negotiate in good faith in an effort to resolve any

1 dispute without judicial intervention. If the Parties are unable to resolve their dispute after meet-and-  
2 confer discussions, any Party may move this Court seeking a resolution of that dispute by the Court.

3 **MODIFICATION**

4 21. This Final Judgment may be modified only on noticed motion by one of the Parties  
5 with approval of the Court, or upon written consent by all of the Parties and the approval of the  
6 Court.

7 **EFFECTIVE DATE**

8 22. The effective date of this Final Judgment is the date of the signature of the Court  
9 entering this Final Judgment.

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11 **IT IS SO ORDERED.**

12  
13 Dated: 5/26/16

14 By: TIMOTHY L. FALL  
15 JUDGE OF THE SUPERIOR COURT  
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**EXHIBIT 1**

## **Ohana Hawaiian BBQ**

825 Russell Blvd., #20

Davis, California

### **Action Plan**

As per the request by Yolo County Environmental Health, a comprehensive action plan is required to mitigate reoccurrence of health code violations documented during inspections conducted from November 7, 2007 thru December 4, 2015.

**Objective:** Eliminate reoccurring health and safety violations to bring and maintain Ohana Hawaiian BBQ's daily operations in compliance with current California Health and Safety Code.

### **PROCEDURES:**

#### **Employee's Health and Personal Hygiene**

All employees have been trained and will have continued training on hand washing required procedures and when hand washing is required, i.e. when they arrive at work, after using the bathroom (in the bathroom sink and at the kitchen hand-wash station), after eating, after touching any part of their body, prior to handling food or utensils, and after conducting a task that contaminated their hands. When serving ready to eat foods with their hands, employees shall use gloves; also to cover cuts and burns after protected with a waterproof bandage.

All handwash sinks/stations will be provided with hot (100°F minimum) and cold water, liquid soap in dispenser, single use paper towels in dispenser and the required signage. The person-in-charge (PIC) is responsible to inspect, first thing upon arrival, all handwash stations, including the employees' restroom, for proper daily maintenance and supply. A designated employee can be assigned to the task for the rest of the day.

Employees have been trained on reportable illness and symptoms. The employees shall notify the PIC anytime they experience any of the following symptoms: nausea, vomiting, diarrhea, and sore throat with fever.

Continued training and monitoring by Food Safety Consultant and PIC will be conducted to eliminate reoccurrence of this violation.

**Employees' habits** - Employees have been trained on not to eat in food preparation/service area. All employees shall eat at sitting customers' area only. Drinks are allowed in a cover container with straw next to the handwash station, where a shelf for storage of their drinks has been provided.

A shelf and cloth hanger rack have been provided, away from food storage and food preparation, for storage of employees' personal belongings.

## **Food Flow through the Operations**

Food temperature will be monitored throughout the food process, from receiving to service, to prevent time-temperature abuse. All staff involved in food preparation has been trained on thermometer calibration practice and equipped with a food service bimetallic stemmed thermometer, in addition to an infrared thermometer available to all staff. All thermometers will be calibrated in a biweekly schedule or as needed (i.e. if the thermometer is dropped, frequent extreme temperature readings). A thermometer calibration log will be maintained, Form 1.

**Purchasing** - Due to high demand and limited refrigeration and freezer storage capacity for animal source products (Potentially Hazardous Food/Time Temperature Control for Safe Food, PHF/TCS), all animal source products are ordered on a daily basis.

**Receiving and Storage** - The person responsible for receiving shall inspect deliveries immediately for temperature control, quality, labeling and signs of pest presence. Also, make product rejection decision if the product does not meet minimum safety requirements. After checking PHF/TCS temperatures, all deliveries shall be stored promptly according to temperature requirements, first storing fresh and frozen PHF/TCS, respectively, and then all dry goods. All food containers shall be stored minimum 6 inches off the floor and away from the walls if possible. From top to bottom, store all ready to eat foods on top shelves, then the fruits and vegetables, then fish and sea food, then beef and pork, and poultry on the bottom shelves.

Note: The bimetallic stemmed thermometer shall be cleaned and sanitized between uses on different products or every four hours minimum.

**Food Preparation** - To prevent reoccurrence of improper frozen animal source products thawing, it has been determined to use the walk-in refrigerator as the primary thawing method, to prevent microbial growth during the process. In the event that the product is not completely defrosted, the thawing process will be completed in the food prep sink with cold running water, 70°F or less.

### ***Steps for food thawing:***

In a daily basis, frozen food from the freezers will be transferred to the walk-in refrigerator for future use. The amount of food to be transferred will be the amount required for a day of operations; therefore, planning is critical. The food shall be transferred minimum three days in advance from the day to be prepared. For example, when operations resume, Wednesday, January 20, 2016, only fresh animal source products will be prepared for the first three days, up to Friday, January 22<sup>nd</sup>. Frozen products will be ordered to be prepared starting, Saturday, January 23, 2016.

***Refrigeration and freezer storage capacity:***

<u>Equipment</u>	<u>Volume</u>	<u>Shelves Surface Area</u>
Walk-in	193 ft <sup>3</sup>	64.5 ft <sup>2</sup>
Freezers (2)	74.5 ft <sup>3</sup>	64.0 ft <sup>2</sup>
Cook line ref.	21.3 ft <sup>3</sup>	10.6 ft <sup>2</sup>
<b>Total Combined</b>	<b>289 ft<sup>3</sup></b>	<b>139 ft<sup>2</sup></b>

***Product container box (case) volume, surface area and weight:***

<u>Product</u>	<u>Case volume</u>	<u>Case surface area</u>	<u>Approx. Content Weight</u>
Chicken	2.2 ft <sup>3</sup>	3.34 ft <sup>2</sup>	60 lbs.
Beef	”	”	50 lbs.
Pork	”	”	40 lbs.
Fish	”	”	30 lbs.

Note: The case of chicken is the container with the largest volume and surface area. Therefore, as a safety factor, the dimensions of the case of chicken will be used to calculate the required storage capacity during peak delivery without risking public health.

**Peak Delivery** - Due to lack of supplies delivery service on Saturday and Sunday, the supplies for Saturday, Sunday and Monday need to be received on Fridays. The following products and amounts are received on Fridays:

<u>Product</u>	<u>Weight</u>	<u>Cases</u>	<u>Volume</u>	<u>Surface Area</u>
Chicken	1500 lbs.	25	55.0 ft <sup>3</sup>	83.5 ft <sup>2</sup>
Beef	200 lbs.	4	9.0 ft <sup>3</sup>	13.4 ft <sup>2</sup>
Pork	40 lbs.	1	2.5 ft <sup>3</sup>	3.3 ft <sup>2</sup>
Fish	80 lbs.	3	6.6 ft <sup>3</sup>	10.0 ft <sup>2</sup>
<b>Total</b>	<b>1820 lbs.</b>	<b>33</b>	<b>73 ft<sup>3</sup></b>	<b>110.5 ft<sup>2</sup></b>

**Friday's Processed Product Use:** Once the chicken has been deboned and cut, the product from one case is stored in two food storage containers with a volume of 0.78 ft<sup>3</sup> and a surface area of 1.54 ft<sup>2</sup>, each. Therefore, the area required for storage of Friday's use is:

<u>Product</u>	<u>Weight</u>	<u>Cases</u>	<u>Containers</u>	<u>Volume</u>	<u>Surface Area</u>
Chicken	500 lbs.	9	18	14.0 ft <sup>3</sup>	28.0 ft <sup>2</sup>
Beef	100 lbs.	2	4	3.1 ft <sup>3</sup>	6.0 ft <sup>2</sup>
Pork	30 lbs.	1	1	1.0 ft <sup>3</sup>	1.5 ft <sup>2</sup>
Fish	10 lbs.	1	1	1.0 ft <sup>3</sup>	1.5 ft <sup>2</sup>
<b>Total</b>		<b>13</b>	<b>24</b>	<b>19 ft<sup>3</sup></b>	<b>37 ft<sup>2</sup></b>

Required refrigerator shelves surface area for Friday's day use = 24 x 1.54 ft<sup>2</sup> = 37 ft<sup>2</sup>

Total refrigeration/freezer product storage needed for Friday's delivery and Friday's day use is:

Volume = 73.0 ft<sup>3</sup> + 19 ft<sup>3</sup> = **92 ft<sup>3</sup>**

Shelves surface area = 110.5 ft<sup>2</sup> + 37 ft<sup>2</sup> = **147.5 ft<sup>2</sup>**

The above data demonstrates that there is enough refrigeration/freezer combined volume storage capacity for Friday's delivery and Friday's day use. The combined storage **volume** capacity utilized with a single product containers stacking is minimum, approximately 31%, but the shelves storage **surface area** is not enough for such practice. Therefore, when possible and practical, without blocking air circulation, two or three product containers stacking will be utilized to provide the additional shelves storage area required in the freezer and refrigerator for the chicken, beef, pork, fish and other items.

Based on the above refrigeration/freezer volume and shelves surface area storage capacity analysis, it has been determined that it is feasible to thaw frozen food under refrigeration, at 41°F or less, without compromising public health.

In the event that the product is not completely defrosted by using refrigeration, the thawing process will be completed in the food prep sink with cold (70°F or less) running water within two hours. The food prep sink shall be washed and sanitized prior to use and in between uses for different products. Only one type of product shall be processed at a time. Time and temperature shall be logged, Form 2.

**Product Marinating** - The food prep table/surface shall be washed and sanitized prior to use and in between uses for different products. Only one type of product shall be processed at a time on a food prep surface. The food shall not exceed more than two hours in the temperature danger zone, 41°F through 135°F, time marker shall be used. After this step, the food shall be stored in

refrigeration, 41°F or less, or cooked to the minimum internal cooking temperature according to the product.

**Cooking** - All food shall be cooked to the required minimum internal cooking temperature for the specified amount of time since it is the only way to reduce microorganisms in food to safe levels.

<u>Product</u>	<u>Temperature and Time</u>
Vegetables for hot holding	135°F/15 seconds
Fish	145°F/15 seconds
Beef and Pork	145°F/15 seconds
Chicken	165°F/15 seconds

Cooking temperatures shall be monitored by taking cooking temperatures of each type of food minimum every two hours, maintain cooking temperature logs, (Form 3). Remember, always clean and sanitize the bimetallic stemmed thermometer in between uses. Once the food has been cooked to their minimum internal cooking temperature, the food shall be served to the customer, stored in a hot holding unit at 135°F or above or properly cooled down to refrigeration temperatures within 6 hours or less using the approved two-step cooling procedure.

**Cooling** - Foods that will not be immediately served to the customers or stored for hot holding shall be cooled down as follows:

**First Step:** 135°F to 70°F in two hours or less in an ice bath or at room temperature in shallow pans (maximum 4 inches deep) with no more than two inches of product, never exceeding the two hour mark.

**Second Step:** 70°F to 41°F in 4 hours or less in the refrigerator, the containers shall be partially covered to allow air circulation and properly labeled with the product name, time and use by date.

Cooling time/temperature shall be logged (Form 4).

### **Hot and Cold Holding Temperatures:**

**Hot Holding Temperatures** – All PHF/TCS stored in hot holding units shall be maintained at 135°F or above and the temperature shall be measured every two hours. In the event of temperature dropping below 135°F for less than 2 hours, the product shall be reheated to 165°F for 15 seconds within 2 hours. If the time of the product being at less than 135°F is more than 2 hours or unknown, the product shall be discarded.

**Cold Holding Temperatures** – All PHF/TCS stored in refrigeration units shall be maintained at 41°F or less and the temperature shall be measured every four hours. In the event of the product temperature increasing above 41°F for less than 4 hours, the product shall be cooled down to 41°F immediately. If the time of the product being at temperatures above 41°F is unknown, the product shall be discarded.

Temperature logs (Form 5) shall be maintained for both hot and cold holding PHF/TCS foods.

**Food Protection and Labeling** - All food shall be stored in food grade commercial containers with tight fitting covers and properly labeled. Whenever transferring food from a package to a bulk food container, the container shall be labeled with the common product name and date. Always wash and sanitize bulk food containers between uses. All food and food containers shall be stored in approved food storage areas, i.e. shelves in food preparation areas.

### **Facility and Equipment Cleaning and Sanitization**

Employees have been trained in proper utensil sanitization. All food preparation, food-contact surfaces, including utensils, i.e. knives, spoons, cutting boards, shall be clean and sanitize prior to use and in between uses with an approved chemical sanitizer solution (the selected sanitizer product is chlorine/bleach). The sanitizer solution is prepared as per sanitizer manufacturer instructions on the container label for a minimum of 100 ppm concentration. Test strips for chlorine sanitizer have been provided to check sanitizer solution concentration upon preparation. All sanitizer solution containers have to be permanently labeled with product name.

**Three compartment sink (3-comp sink)** - The flow of utensils for wash, rinse and sanitize is set up from right to left facing the 3-comp sink; this is to prevent cross-contamination of food at the food prep sink.

Dirty utensils will be cleaned at the right side drain board, then wash in a solution of hot water (110°F minimum) and soap or detergent in the first compartment. Then properly rinse with hot water (110°F minimum) to remove all soap or detergent in the second compartment. Then sanitize with 100 ppm minimum chlorine/bleach sanitizer solution (approximately maintained between 75°F to 100°F) in the third compartment for one minute minimum. Once the utensils have been sanitized, then air-dry all utensils on the left side drain board. All clean utensils shall be stored to be protected from contamination. Enough storage shelves have been provided within food preparation areas for clean utensils storage.

Sanitizer solution need to be check frequently, minimum every 2 hours, for minimum required 100 ppm concentration level. If the concentration level is less than 100 ppm, the sanitizer solution needs to be replaced with a new batch. All wiping towel/cloths shall be maintained in the sanitizer solution when not in active use. Sanitizer concentration levels shall be logged, Form 6.

**Facilities cleaning schedule** - A facility master cleaning schedule will be developed based on the business operations to facilitate maintenance of the establishment. In addition, it will help

prevent pest infestation. The master cleaning schedule will be developed within the first week of operations and will be revised to accommodate any changes needed to prevent reoccurrence of cleaning and sanitation violations.

### **Pest Management**

In addition to daily cleaning of the establishment and inspection of daily supplies deliveries, the facilities need to be inspected for potential entrance access for pest. Outside access doors shall be self-closing and maintained close when not in active use. Seal all gaps, cracks and holes in floors, walls and ceilings that could permit the entrance of pest. Fix any water leaks. Provide pest monitoring traps and check them frequently for pest activity. If pest activity is detected, notify the professional pest control operator in record for service. Provide additional approved pest control devices, i.e. fly trap lamp, air curtain, if needed.

### **Permit, Inspection Reports, Required Signage and Certifications**

The permit to operate and signage informing the customers that the most current Yolo County Environmental Health inspection report is available for review shall be displayed in a conspicuous area. Maintain Yolo County Environmental Health inspection report at premises available at customer's request. Also, PIC's Managers Food Safety Certification shall be displayed.



